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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 639

MATSON NAVIGATION COMPANY, a corporation,
Petitioner,

vs.

HENRY C. LAWLER,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Amicus Curiae Brief on Behalf of Pacific American Steamship Association

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STATEMENT OF INTEREST AND SCOPE OF BRIEF

This brief as amicus curiae is filed on behalf of Pacific American Steamship Association, Inc., a non-profit California corporation. The members of the Association are twelve West Coast steamship companies comprising about 90% of the dry cargo and passenger vessel operators on the Pacific Coast. They operate a total gross tonnage of over one million tons and represent about 20% of the privately owned American-flag merchant marine now active in foreign and domestic trades on a national basis.

The instant case would require wages, maintenance, and cure to be paid where the injury occurs while the seaman is

off-work, off-ship at his home port. Any extension, as this is, of the scope of the obligation to pay maintenance, wages and cure is of compelling interest to the steamship industry and therefore, perforce, to the American public as consumers and vendors of ocean carried goods and as supporters through taxation of the subsidies paid to various members of the steamship industry pursuant to the Merchant Marine Act of 1936.

The present cost of maintenance is not inconsiderable. Maintenance payments by all members of Pacific American Steamship Association employing a monthly average of eight thousand seamen range from 1.1 million to 1.4 million dollars in a representative year. For American-flag owners as a whole, the cost of maintenance is in the neighborhood of six million dollars annually.

The instant case presents a vital question of maritime law and policy in that the scope of this traditional benefit, peculiar to the seaman, is by the decision of the court below, extended to a landsman's risk which has no relation to the seamen's calling and yet would provide benefits not enjoyed by shoreside workers and which are an unnecessary addition to already existing and adequate protections. This brief will seek to show the lack of both the social need and the logical compulsion for any such extension.

The doctrine of wages, maintenance and cure had its historical genesis at a time when conditions of seaman employment were far different than they are today. It was conceived out of the necessity of providing protection for a class of workmen peculiarly in need thereof. Any extension of its scope should be weighed and determined in the light of the same considerations.

The following brief outline of the economic benefits presently enjoyed by seamen will furnish such a perspective:

PRESENT ECONOMIC STATUS OF AMERICAN SEAMEN

1. Wages

Since 1939 the average American seaman's monthly earnings have increased on the West Coast from $82[1] to $553.13.[2] In percentages his gain is almost 700% over prewar earnings. A considerable portion of this advance has occurred in the post-war years. This most recent period has seen the seaman outstrip even the highly skilled worker in the auto and steel industry. A recent study[3] reports:

> "* * * For example, while seamen's earnings were slightly below those of steel and automobile workers in 1945, by the Fall of 1952 they were 19 per cent higher than earnings in the steel industry and 21 per cent higher than earnings in automobile manufacturing."

It must be remembered that these figures do not reflect the very substantial value of board and room received as an incident of employment. The current West Coast Collective Bargaining Agreements provide that from $8 to $10 per day must be paid to the seaman when board and lodging are not provided.

2. Disability Benefits

In addition to his right to sue the employer (1) for negligence[4] and (2) for absolute liability resulting from unsea-

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1. *Industrial Relations in the Ocean Shipping Industry*, Report of Industrial Relations Counselors, Inc. to Maritime Industry Survey Committee (1953). For purposes of wage studies the Able Seaman is customarily considered the "average" seaman.

2. *Seamans Earnings*—Research Report issued July 16, 1954, by Pacific Maritime Association.

3. *Industrial Relations in the Ocean Shipping Industry*, p. 64. (See footnote 1, *supra*)

4. 46 U.S.C. Sec. 688.

worthiness,[5] the seaman enjoys benefits analogous, but far superior, to the shoreside workmen's compensation remedy.

To enumerate these latter benefits:

A. Where the seaman is injured or suffers illness while in the service of his ship, he is entitled to:

(1) Free hospitalization and out-patient medical care including drugs, dental care, X-rays, laboratory tests, etc. (42 U.S.C. sec. 249);

(2) Maintenance payments of $8 per day from his employer while in a non-hospitalized status until cured or until pronounced permanently incurable. There is no time limit;

(3) If the disabled seaman is on articles he is entitled to payment of basic wages to the end of the voyage. By example, a broken leg ashore in San Francisco at the start of a fifty-day trans-Pacific voyage would guarantee the able seaman over $500 in unearned wages;

(4) A guaranteed payment from the Employer-Employee Welfare Fund of $45 per week for the first twenty-six weeks of disability, plus $10 per day for the first twelve days of hospitalization; (These figures apply to West Coast seamen. Welfare Plans with similar benefits cover East Coast and Gulf seamen.)

(5) If disability occurs as a result of collision, stranding, fire or sinking of the vessel, the seaman is entitled to disability compensation at the rate of $100 per month while hospitalized and $150 per month while convalescing, up to a maximum of $5,000. (This by provision of collective bargaining agreements extending the coverage of the Second Seaman's War Risk insurance to marine perils.)

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5. *THE OSCEOLA*, 189 U.S. 158 (1903).

B. Where the seaman is injured but *not* in the service of his ship he is still entitled to:

(1) The free medical care benefits outlined under (1) above if his injury or illness occurs within 90 days of his last sea service amounting to 60 days or more. (Lack of opportunity to ship operates to extend the 90 day period. 42 C.F.R. sec. 32.14-17.)

(2) The $45 weekly disability payment and $10 daily hospital benefit provided by the Welfare Plan (in the case of West Coast seamen).

These off-work benefits are superior to the coverage provided by the majority of shoreside collective bargaining contracts. For the vast majority of Americans free medical care and disability compensation for off-work injury and illness simply does not exist. An exception is the State of California where a limited form of state disability insurance provides employee-financed benefits up to $35 per week and hospitalization of $8 per day for 12 days but *not* free medical care.

In this setting the paramount question is whether the doctrine of wages, maintenance and cure should now be *extended* to permit the seaman injured while off-work at his home port to receive maintenance payable for an unlimited period at the rate of $8 per day and unearned wages to the end of the voyage *in addition* to the already very favorable Welfare and free medical care benefits available to him for off-work injuries and illnesses.

As a practical illustration, if seaman A and janitor Z are both so unfortunate as to fall down the stairs in their homes on a given evening and suffer a broken leg, both will be in need of adequate medical care and some compensation for the loss of earnings during their periods of disability. Independently of the decision below, seaman A will receive free

medical care and hospitalization, plus $45 per week for 26 weeks as welfare payments. By the decision below he will receive, in addition, $56 per week, maintenance, and if the injury occurs at the beginning of the voyage, he would also receive his basic wages for the duration of the voyage, an amount probably in excess of $500.

By contrast, janitor Z would receive nothing beyond what he might be able to provide from private insurance.

As will be seen, the seaman's economic position is favorable when contrasted with the organized shoreside worker and overwhelmingly favorable if contrasted with the unorganized worker. It is respectfully submitted that before further advances are granted to the seaman purely by reason of his status as a seaman and by extension of a doctrine which had as its historical basis considerations of need, a careful re-analysis should be made to decide whether the extension is either logically, economically, or otherwise, justified in the light of the present status of seamen.

CONCLUSION

We respectfully submit that the petition should be granted and the judgment reversed.

Dated: San Francisco, California, March 4, 1955.

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CERTIFICATE OF COUNSEL

I, John Hays, counsel for Pacific American Steamship Association, Amicus Curiae, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 4th day of March, 1955, I served copies of the foregoing brief on counsel for all parties of record by mailing copies to their offices in duly addressed envelopes.

JOHN HAYS

for Amicus Curiae
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CERTIORARI DENIED